

COMMISSIONERS APPROVAL

CHILCOTT *gf*

LUND *sl*

THOMPSON *at*

TAYLOR (Clerk & Recorder)

Date.....February 10, 2006

Members Present.....Commissioner Greg Chilcott,  
Commissioner Betty Lund and Commissioner Alan Thompson

Minutes: Sally Fortino

The Board of County Commissioners met with Paul Moore and Dana Boruch of DNRC to discuss access on Soft Rock. Paul said there are two parcels of land. We have researched for easements to these parcels. There was a one-room schoolhouse, whose foundation is still there (Dominick). There are some Forest Service easements. We would like to be able to do some harvesting beyond that area. The County abandoned the road in 1961-62.

The Commissioners examined maps provided by DNRC to visually note the problem.

Paul explained that a memo from the Forest Supervisor indicates the road going up Soft Rock was abandoned in 1961 in a special session with the Board of County Commissioners. In 1972 the road was reopened. The question is whether all of what was closed is included in the reopening.

Dana said determining if it is a County road is the initial necessity, since that will determine how to approach and solve the other problems. The public access is the point here. We find abandonment in a Forest Service letter, then we find out it is not a County road. We have spent time going back and forth, trying to discover what specifically was abandoned. Was there a special session? The petition to close caused Nedra to send information on a road reopening. We have discovered that the road was opened in 1974. We have been unable to find data relating to an abandonment being in effect.

James said abandoning the road as a County road abandons the right of way.

Dana said documents from 1909 and 1912 say the County will not maintain the road, but would call it a County road. It becomes an issue where people are illegally posting State property. There have been attempts from private citizens to cut off public access. Many lots are subdivided, with dual routes out of the area.

Commissioner Chilcott asked whether it was correct to state the DNRC's request is to ascertain the status of the road, or the granting of easement.

Paul said they need confirmation from the Board of County Commissioners if the County has labeled the road under discussion as a County road from Soft Rock.

Commissioner Chilcott said James would need to research the status of the road.

Paul said they didn't have an office in the area when the road was closed in 1961.

Dana said they have documentation of a subsequent reopening of the road. A citizen desires to develop in that area. Paul said that requires clarification.

Paul said the citizen is passing through State land, and has made some 'improvements' to the road. He added the DNRC is trying to access Section 15 through the north.

Commissioner Chilcott said the Board of County Commissioners has been requested by the State to buy an easement through Soft Rock, through state land.

Dana said they believe it to be a county road. Paul said they would aid in solving the problem as well as they can.

Commissioner Chilcott said it looks like an opportune time to work together to resolve this issue. Paul said all Counties know they have until 2012 to resolve the issue.

James asked how full market value is determined. Dana said a State-licensed appraiser must determine full market value.

Paul said they sold an 8-foot easement to a developer for power lines. An acre cost \$3,000-\$5,000. Perhaps something could be worked out with a cash payment or a combination of cash and maintenance work.

Dana said they do not have the capability of enforcing the Counties' requirement to obtain more easements. Commissioner Thompson said only one County has complied with it so far. The next legislative session will review the issue again.

Paul said a developer has improved Soft Rock Road. It's pretty nice right now.

Dana said they don't grant easements over our parcels if we don't have access to the parcel. Paul said they think it is a County road. Dana said they want to ensure public access.

James asked if anyone was saying you couldn't have access to the road.

Commissioner Thompson said the area has been contentious for years. It has been used as a dumping ground. Neighbors have complained to the Board of County Commissioners about dumping, shooting, etc.

Commissioner Chilcott asked if the State would require Ravalli County to maintain the right of way if it is determined to be public.

Dana asked if we have public access to State land. Commissioner Chilcott said it can't be called 'public access to State land' if we don't have access.

James asked why Ravalli County is needed if DNRC's opinion is that it is a county road. Dana said it goes through private land; they don't want to start logging and be denied access on the road. James said if his research indicates that the County agrees, there is still no guarantee the decision won't be challenged. We could say the records are clear and still get sued.

Commissioner Chilcott asked how we claim one section is open to the public when one section is in question.

Dana said the County hasn't taken a side on the issue of whether it was public access. The County initiated that they have a right of way over the peak. Something in writing from Ravalli County, with documentation, would confirm the County's position.

Commissioner Chilcott pointed out that if Ravalli County doesn't have access our position might be invalid. James agreed.

Commissioner Chilcott said it is a great opportunity for the two factions to work together.

Dana said someone has maintained road.

James said there is no gate across the road; it may be a public prescriptive road whether it is a County road or not. If it was not abandoned it continues to be a public road.

Dana said if the road was used five years prior to Statehood, it is prescribed.

James said if they could prove use for 5+ years it doesn't matter if it is a County road or not. Obviously there is a road there.

Commissioner Chilcott said the road was used openly before DNRC existed.

Dana said there are hundreds of roads running from Lolo to Hamilton; unless they were abandoned, they are still roads. It doesn't even have to look like a road.

Paul said the road in question was used as a road before statehood.

James said if a map from that period shows a road there is no question. Paul said he would like to see it as a county road.

James said if it is a county road we know it's a 60' easement. The area is slowly changing its look.

Commissioner Chilcott suggested James draft a letter saying until this is determined to be a public road it cannot be a County road. This could invalidate anything east of Soft Rock having access.

James said the road would not get maintenance from the County even if it were determined to be a County road.

Dana said if this is a County road you have something to negotiate with us. It becomes a negotiating tool for Ravalli County.

Paul suggested they could take James' suggestion and call it prescriptive easement. They want to ensure public access.

Dana said a letter from the Forest Service shows the neighbors are heated over the issue.

Paul said he would like a County road all the way through. He has access to old Forest Service maps and will see if there is a road shown on those maps. James said if it is on the Forest Service map, chances are it was used as a road.

The Commissioners thanked Paul and Dana for their time.